

APPEAL NO. 170858
FILED MAY 31, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 21, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to right shoulder labral tear, right shoulder impingement, or partial tearing of the superior glenohumeral ligament of the right shoulder; (2) the appellant (claimant) did not have disability from September 10, 2015, through the date of the CCH as a result of the compensable injury; (3) the claimant reached maximum medical improvement (MMI) on January 11, 2016; and (4) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of the extent of injury, disability, MMI and IR. The claimant contends on appeal that he was not physically able to attend the February 21, 2017, CCH and the 10-day letter sent to him was mailed to an old address. The claimant contends that he has evidence that establishes the compensable injury extends to the disputed conditions and that he had disability for the disputed period. The claimant further contends that he underwent surgery in July 2016, for his right shoulder and that the MMI date of January 11, 2016, adopted by the hearing officer is premature because at that time he had not yet received proper medical treatment for the entire compensable injury. The appeal file does not contain a response from the respondent (carrier).

DECISION

Reversed and remanded.

The evidence reflects that the claimant, a running back for a football team, sustained a shoulder injury when he attempted to tackle another player. The parties stipulated that the claimant sustained a compensable injury in the form of a right shoulder strain on (date of injury). On January 12, 2017, a CCH was called to order to hear the disputed issues. Both the carrier and the claimant were present. The claimant offered exhibits and the carrier objected to claimant's exhibit 3 on the basis that this exhibit was not timely exchanged. The hearing officer ruled she would allow the exhibit in evidence and offered the carrier a continuance to "obtain more evidence" to respond to the exhibit. The carrier stated it wanted the continuance and the case was reset.

A second setting of the CCH was held on February 21, 2017, to decide the disputed issues of extent of injury, disability, MMI and IR. The claimant did not appear at the CCH and a 10-day letter dated February 22, 2017, was sent to the claimant. The claimant failed to respond to the 10-day letter and the hearing officer closed the record

on March 9, 2017. The hearing officer issued a decision on March 9, 2017, that was unfavorable to the claimant on all of the issues before her. In her discussion of the case in the decision and order the hearing officer stated that she mailed a 10-day letter to both the claimant and subclaimant on that date. We note that there is no evidence in the appeal file that a subclaimant was involved in this case. A 10-day letter dated February 22, 2017, is in evidence that was mailed to the claimant at the following address: (address 1), (city), Texas 79114-8707. The decision and order was mailed to the claimant at the following address: (address 2), (city), Texas 78234-2565. In his appeal the claimant contends that he was physically unable to attend the February 21, 2017, setting and the 10-day letter was sent to an incorrect address and stated his correct address was (address 2), (city), Texas 78234. This same address was listed as the claimant's address on the sign-in sheet for the January 12, 2017, CCH.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and thus, remanded the case to the hearing officer to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In the instant case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on February 21, 2017, or respond to the 10-day letter dated February 22, 2017. As in APD 020273, *supra*, the case is remanded to the hearing officer to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

Accordingly, we reverse the hearing officer's determinations that the compensable injury of (date of injury), does not extend to right shoulder labral tear, right shoulder impingement, or partial tearing of the superior glenohumeral ligament of the right shoulder; the claimant did not have disability from September 10, 2015, through the date of the CCH; the claimant reached MMI on January 11, 2016; and the claimant's IR is zero percent and we remand this case to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so on all of the issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge